

REMARKS

Claims 13, 14, 17 and 18-22 are pending. Claims 19-22 have been withdrawn, in response to a restriction requirement.

By this amendment, the specification and claims have been amended in response to the Examiner's request. In addition, a Second Substitute Sequence Listing is provided to correct an error in the previously filed Substitute Sequence Listing.

Amendments to the Specification

The specification has been amended in response to the Examiner's request (see, section entitled "Summary of Examiner Interview") to incorporate material from commonly-assigned U.S. patent application S.N. 08/414,926 (now U.S. Pat. 5,721,354), originally incorporated by reference (see, instant specification at page 4, lines 19-21; and page 22, lines 31-33). Please note that references to document locations refer to U.S. Pat. 5,721,354 and not to U.S. patent application S.N. 08/414,926.

U.S. Pat. 5,721,354, recites the accession number for the AD169 genome sequence (see, for example, column 23, lines 47-49) and further discloses the use of the AD169 nucleotide numbering as a reference for comparison of CMV genomes and (see, for example, column 23, lines 62-65; and column 25, lines 25-27). The instant specification describes the use of the AD169 nucleotide numbering convention (see, for example, page 9, lines 23-24) and indicates that the AD169 genomic sequence is available in the publicly accessible GenBank database (see, page 14, line 20) and, the accession number for the AD169 genome was incorporated by reference to U.S. patent application S.N. 08/414,926. In response to the Examiner's suggestion, see discussion below, the instant specification has been amended to specifically recite the accession number for the AD169 genome previously incorporated by reference. In particular, the accession number has been incorporated into the instant specification at the paragraph beginning at page 8, line 37; the paragraph beginning at page 14, line 15; the paragraph beginning at page 32, line 18; and the paragraph beginning at page 41, line 15.

The amendments to the specification incorporate subject matter that was well known in the art, publicly available and incorporated by reference into the specification as originally filed. Therefore, no new matter is introduced by the amendment.

Applicants submit that the amendments to the specification were not made earlier since they have been made in response to new grounds of rejection. Entry of the amendments to the specification is respectfully requested.

Amendments to the Sequence Listing

The instant Second Substitute Sequence Listing contains sequences that were originally filed in Figures 1A to 1R, Figures 2A to 2H and merely corrects an inadvertent error in the previously submitted Substitute Sequence Listing for the sequences of the crossover points disclosed in Table 2 (see page 41, line 29 to page 42, line 13) of the specification.

As noted in the Preliminary Amendment dated March 10, 2005, the sequence of the AD169 genome was known well known in the art, publicly available from GenBank and the nucleotide numbering of the AD169 genome was commonly used as a reference for comparison of the genomic organization of HCMV strains. Therefore, the amendment to the sequence listing does not introduce new matter and does not require further search or consideration of the prior art.

Amendments Claims

The amendments to the claims are in response to the Examiner's request merely to further clarify the claimed invention, and do not raise an issue of new matter or require a further search or consideration of the prior art.

Claim 13 has been amended to spell out the abbreviation "CMV" at its first occurrence. Support for this amendment is found throughout the specification as filed, for example, at page 1, line 22.

Claims 13 and 14 have been amended to recite the accession number of the AD169 genome. Support for this amendment is found in the material originally incorporated by reference (see, page 4, lines 19-21; and page 22, lines 31-33) presently incorporated by amendment (see, above, section entitled "Amendments to the Specification").

These amendments do not add new matter and do not affect the scope of the claims.

Applicants submit that the amendments to the claims were not made earlier since they have been made in response to new grounds of rejection. Entry of the amendments to the claims is respectfully requested.

Information Disclosure Statement

Applicants thank the Examiner for consideration of the Information Disclosure Statement (IDS) filed on October 11, 2006.

Summary of Examiner Interview

Applicants would like to thank the Examiner for taking the time to discuss the evidence relating to the AD169 numbering convention, the availability of original sequences submitted to GenBank and/or EMBL and amendments to the specification and claims. As discussed on July 6, 2006, Applicants have amended the disclosure and claims to include material related to the AD169 genome sequence previously incorporated by reference to commonly-assigned U.S. patent application S.N. 08/414,926 (see for example, page 4, lines 19-21; and page 22, lines 31-33). Specifically, Applicants have amended the specification and claims to include the accession number for the AD169 genome sequence.

In addition, Applicants wish to thank the Examiner for consulting with the technology center quality assurance specialists regarding submission of the publicly available AD169 genome sequence. In the telephone message of July 12, 2006, the Examiner noted that the technology center quality assurance specialist, Yvonne Eyler, indicated that submission of the full sequence for the AD169 is not needed so long as the art shows it was well known in the art. Applicants have previously provided evidence that the sequence of the AD169 genome was known well known in the art, publicly available from GenBank and that the nucleotide numbering of the AD169 genome was commonly used as a reference for comparison of the genomic organization of HCMV strains (see, the response of October 11, 2006, page 4, last two paragraphs; page 5, last paragraph to page 6, second paragraph; and the Exhibits of record). Furthermore, the Office has acknowledged that the AD169 genome is found in Genbank, and that the references provided by the Applicants refer to the AD169 genome (see, Office Action, page 3, first paragraph). Accordingly, Applicants have not amended the sequence listing to include the full sequence of the AD169 genome.

Objection to Claim 13

The Examiner has maintained the objection to claim 13 for not spelling out "CMV" at its first occurrence. Applicants thank the Examiner for bringing this oversight to their attention and have amended claim 13 to spell out "cytomegalovirus."

Rejection of Claims 13, 14, 17 and 18 Under 35 U.S.C. § 112, Second Paragraph

The Examiner has maintained the rejection of claims 13, 14, 17 and 18 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

In particular, the Examiner has required the Applicant to amend the disclosure to include the material incorporated by reference, specifically the AD169 genome.

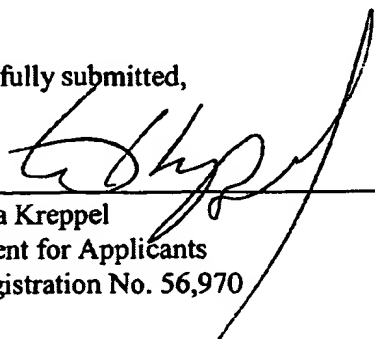
As discussed above (see, section entitled "Amendments to the Specification") Applicant has amended the specification and claims to recite the specific accession number of the AD169 genome. Using this number, one of skill in the art can readily obtain the AD169 genome sequence at the time the instant application was filed from GenBank and/or EMBL. Furthermore, as noted by the Examiner, the technology center quality assurance specialists have indicated that submission of the AD169 genome sequence is not necessary if the art shows it was well known. As discussed above (see, section entitled "Summary of Examiner Interview") Applicants have shown, and the Office has acknowledged, that the AD169 genome sequence was well known, is publicly available from GenBank and that the nucleotide numbering of the AD169 genome was commonly used as a reference for comparison of the genomic organization of HCMV strains. In view of the foregoing, reconsideration and withdrawal of the rejection of claims 13-14 and 17-18 is respectfully requested.

CONCLUSION

In view of the above remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

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Respectfully submitted,

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